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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Jacqueline Scott Corley, Magistrate Judge

JOHN LOFTON, an individual,)
on his own behalf and on)
behalf of all others similarly))
situated,)

Plaintiffs,)

VS.)

No. C 13-5665 YGR (JSC)

VERIZON WIRELESS (VAW) LLC, a)
Delaware limited liability)
company, and DOES 1-100,)
inclusive,)

Defendants.)

San Francisco, California
Thursday, November 20, 2014

TRANSCRIPT OF PROCEEDINGS OF THE
OFFICIAL ELECTRONIC SOUND RECORDING
FTR time: 2:35-3:04 = 29 minutes

APPEARANCES:

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(Appearances continued on next page)

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Thursday - November 20, 2014

2:35 p.m.

P R O C E E D I N G S

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(Transcriber's Note: Due to parties failing to speak up, "(inaudible)" is noted throughout as appropriate.)

THE CLERK: Calling civil action C 13-5665, Lofton versus Verizon Wireless.

MR. PRESTON: Good morning, Your Honor. My name is Ethan Preston and I represent John Lofton.

THE COURT: Good afternoon, Mr. Preston.

RIGHT1: Good afternoon. Charles Messer for Verizon Wireless.

THE COURT: All right. Good afternoon.

All right. So what we're going to have to do is figure out what we have left, how we're going to get there, and then what the date is for class certification.

So Judge Gonzalez Rogers referred the case to me, at least for a recommendation as to the date. I think she'll probably accept my recommendations. It's pretty clear we have to move the date, so the question is figuring out what date to move.

And, so, to start with, I think we need to figure out what discovery is left.

So I'll start with you, Mr. Preston.

MR. PRESTON: The -- Collecto has three dialers. We have records for one dialer. As we understand it, there's

1 not -- not, like, a confirming declaration yet but . . .

2 **THE COURT:** And tell me what these records are when
3 you say you have records for one dialer.

4 **MR. PRESTON:** I'm going to use the terms Call Detail
5 Record, Caller and Dialer Log interchangeably. They are . . .
6 records kept by the dialer itself.

7 With respect to the GC dialer, which has been produced,
8 the GC dialer and the account notes are the same thing. The
9 dialer logs are kept in the account notes. And so they've
10 extracted everything from -- from the account notes, which is
11 that FACS system we keep talking about. That's done.

12 There are two other documents --

13 **THE COURT:** Okay. So let me stop you.

14 So just tell me: What's that -- What's that look like?
15 What did you get?

16 **MR. PRESTON:** It -- It looks like . . . They're big
17 Zip files and they're -- they're plain text and there are lines
18 of data that are delineated or delimited. If I recall
19 correctly, they're delimited by tab.

20 **MR. MESSER:** I think that's right. They're in Excel
21 format --

22 **MR. PRESTON:** Okay.

23 **MR. MESSER:** -- as requested.

24 **MR. PRESTON:** Okay. So it looks . . . The fields are
25 identified, and every field for every row of data is -- has the

1 same piece of data, so it's very easy to figure out, was this
2 call to a wrong number? If not, you pitch it. Was this call
3 during the class period? So you look at the date.

4 **THE COURT:** Okay.

5 **MR. PRESTON:** If not, you pitch it.

6 For the sake of the IPA claim, was this call to a
7 California Class Area Code?

8 Okay. You know, things like -- A little bit more
9 sophisticated later on but, for the moment, we're going to
10 pitch those.

11 **THE COURT:** What do you mean by "pitch"?

12 **MR. PRESTON:** Exclude.

13 **MR. MESSER:** Throw out.

14 **MR. PRESTON:** There are two other dialers. Those
15 dialers are the Noble dialer and the Sound Bite dialer.
16 There's also a LiveVox dialer . . . that I -- I -- I don't
17 think -- Actually, now that I think about it, that was used by
18 Collecto during the class period because they were -- stopped
19 working for Verizon in 2012.

20 We're supposed to get the Noble dialer logs any day now.
21 We don't know what the story is with the Sound Bite dialer
22 logs. I don't know exactly what's being produced because, as
23 you know, the dialer logs, a lot has been destroyed.

24 I -- I learned this morning from Mr. Messer that there's
25 yet another set of documents that supposedly contains the

1 information we need. The -- It's the -- what he's described as
2 the metadata associated with the call recording archives.

3 You know, it -- it . . . From our perspective, there was
4 spoliation.

5 **THE COURT:** All right. We're not arguing that motion
6 right now.

7 So -- So I just want to say is right: So what you're
8 waiting for from Collecto is the Noble dialer logs and the
9 Sound Bite dialer logs.

10 **MR. PRESTON:** Right.

11 Now, because this is -- In the Verizon case, there are all
12 the other --

13 **THE COURT:** I know. I just -- I'm taking this one
14 step at a time.

15 **MR. PRESTON:** And that's fine.

16 **THE COURT:** So, Mr. Messer.

17 **MR. MESSER:** Yes.

18 **THE COURT:** The Noble dialer logs.

19 **MR. MESSER:** Well, the request was for information
20 that can identify calls, and we were extracting that
21 information from what we have. That extraction will be
22 produced for Noble by Saturday and for all the other calls --
23 for the Sound Bite, by next Wednesday before Thanksgiving.

24 But we discovered yesterday, who -- We've known for a
25 couple of years that Collecto had an archive of recordings.

1 And the company's understanding was that those were recordings
2 and defined in the (inaudible) process.

3 Well, I had my expert actually pull one of those CDs. And
4 what I learned yesterday was, yes, the CD had recording, but it
5 also has metadata for calls, not only for recorded calls but
6 for all calls.

7 And so there are three or 4,000 CDs that, according to
8 testimony, date back to 2007-2008. I don't have them
9 cataloged. The only one we've looked at is from July 2013.
10 But this is a potential source.

11 And so I told Mr. Preston, you know, I'm not going to stop
12 this current production to try to go CD mining. I'm going to
13 extract what we can out of the existing records and produce
14 that, Noble by Saturday and the rest by next Wednesday.

15 But then let's sit down and let's talk about: Do we need
16 to go CD mining? Okay. We might or we might not. We might
17 need to mine CDs for the IPA class, which is one year, but not
18 the TCPA class which is four. But those geographics are there.
19 They're out there. I disclosed them as soon as I -- within
20 2 -- within 24 hours of when I learned of their existence.

21 And -- And I just want to be clear that the current
22 production is not going to include whatever data is -- is on
23 the CD or file.

24 **MR. PRESTON:** I do have on this point -- And we're
25 taking it point by point. I understand that. I started off on

1 the wrong foot previously.

2 But from our perspective, it would be really great if we
3 had some declarations about what has been produced and so it's
4 crystal clear that these -- these are all the documents that,
5 for this particular dialer, and then it corresponds with this
6 particular dialer, and there's an authenticating person who --
7 who explains where the documents came from.

8 **THE COURT:** So -- All right. I hear -- So,
9 Mr. Messer, your representation is that, by next Wednesday --

10 **MR. MESSER:** Yes.

11 **THE COURT:** -- the -- the account notes, or logs, or
12 whatever we want to call them, for the GC dialer, the Noble
13 dialer and the Sound Bite dialer will have all been produced.

14 **MR. MESSER:** Yes.

15 **THE COURT:** Is there any reason you or someone from
16 Verizon can't -- or Collecto, whoever -- can't submit a
17 declaration that just says that?

18 **MR. MESSER:** We can do that.

19 **THE COURT:** Okay. All right. Why don't you do that.
20 If you're going to produce -- Can you do it by Wednesday when
21 you produce the final documents, or at least by the following
22 Tuesday, the 2nd?

23 **MR. MESSER:** By the following Tuesday for --

24 **THE COURT:** Okay.

25 **MR. MESSER:** -- the declaration.

1 **THE COURT:** All right. By December 2nd. All right.

2 So that's the Collecto documents.

3 And as to this met -- metadata, you're going to look to
4 that and you're going to talk about that, whether you need to
5 see that.

6 **MR. PRESTON:** Yeah, because it then -- it may be
7 duplicative.

8 **THE COURT:** All right.

9 **MR. PRESTON:** I want to let me flag an issue up front
10 so Your Honor understands sort of the stakes.

11 When we deposed Mr. Madden, he testified, look, the FACS
12 doesn't necessarily capture the dialer that's used, which one
13 of these three dialers, or the dialing mode.

14 Those are going to be relevant to the merits of the TCPA
15 claim, because they have different appendices and different
16 operations for different dialers.

17 And the dialer mode (inaudible) complication because
18 there's some One-Click dials that involve human intervention
19 that are not like the Power Mode dialer, the full predictive
20 dialer, where the -- the person literally sits on the phone and
21 is connected to call after call after call. Those records were
22 in the dialer logs, the CDRs.

23 The records that Mr. Messer is producing, as I understand
24 it, are being extracted to some degree from FACS and they're
25 replicating the call logs through FACS.

1 As we understand it, FACS does not always or necessarily
2 contain the dialer mode, or the dialer, and it may not contain
3 the disposition code, which would be relevant if they were
4 using a wrong number (inaudible) for a caller or not.

5 So . . . if we can't get that information from . . . from
6 the records that go -- that are produced, then we have to start
7 talking about this -- this CD metadata.

8 **THE COURT:** All right. Those are the records you're
9 getting Saturday and Wednesday -- by Wednesday.

10 **MR. PRESTON:** Yeah. That is what I've been told.

11 **THE COURT:** Okay. All right. Well, so, then, we're
12 not there.

13 **MR. PRESTON:** Is there -- Actually, now that I have
14 you here, is there any reason we can't get that declaration to
15 explain whether or not the -- the data includes those three
16 categories? These are the disposition code, the dialer, and
17 the dialer mode. It would be real helpful to just have it up
18 front. This is Verizon's/Collecto's assertion about what's
19 contained within our production.

20 **MR. MESSER:** So you want disposition codes, dialer
21 I.D. --

22 **MR. PRESTON:** And --

23 **MR. MESSER:** -- and dialing mode.

24 **MR. PRESTON:** Dialing mode.

25 **THE COURT:** Well, just say whether it's there or not.

1 **MR. MESSER:** Right. Yeah.

2 **THE COURT:** All right. All right. Okay. So that
3 takes care of Collecto, then.

4 Is that correct, Mr. Preston?

5 **MR. PRESTON:** Yes.

6 **THE COURT:** All right. So, then, we have the others.
7 So, we have the issue of the joint discovery letter on
8 sort of control, and that's with respect to essentially wanting
9 documents that show what kind -- is this right? -- what kind of
10 dialer the other vendors are using? Whether they were using
11 predictive dialers?

12 **MR. PRESTON:** Well, it's -- I understood your order a
13 bit more broadly.

14 And we were to brief control --

15 **THE COURT:** No.

16 **MR. PRESTON:** -- period.

17 **THE COURT:** No, no. I'm saying you brief control
18 but -- but it's with respect to -- but the motion to compel is
19 with respect to --

20 **MR. PRESTON:** Oh, the original motion to compel.

21 Gosh, Your Honor, I . . . I don't specifically recall. I
22 think it was doctrines, whether or not there was some kind of
23 defense as to whether or not their -- their -- their documents
24 were predictive dialers or constituted ATDSs.

25 **THE COURT:** Right. And the issue was that they are

1 not Verizon's documents, they're vendors', and whether they
2 have legal control as the Ninth Circuit has defined it in
3 *Citric Acid*; right?

4 **MR. PRESTON:** Sure.

5 **THE COURT:** Okay. So this is my tentative view, which
6 is that I do think the contracts and the audit provisions give
7 Verizon legal control over the documents.

8 And the reason is, is because it says such examination
9 audit -- you can correct me if I'm wrong, Mr. Messer -- may
10 include reviews of suppliers' collection efforts.

11 I mean, the -- the reason that Verizon is here is because
12 the plaintiff, at least, is trying to hold them liable for what
13 Collecto did, and that's why you have your audit -- ability to
14 audit their collection efforts, to make sure they're complying
15 with the law.

16 And I find it hard to believe that if you wanted to know
17 if they were using an illegal dialer, that you couldn't find
18 that out, that under this contract, they wouldn't have a legal
19 obligation to disclose that information to you.

20 **MR. MESSER:** But this kind of information is far
21 beyond the scope of what these companies actually do in audits
22 and -- and far beyond -- and it -- it does not -- Contracts
23 don't anticipate litigation and, you know, it's -- it's -- the
24 record are not ours.

25 **THE COURT:** Well, there are cases that -- that -- that

1 when -- There -- There are cases where there's Cooperation
2 Agreements. But there's certainly cases -- for example, the
3 *Doe vs. AT&T* from this district -- that relies on essentially a
4 provision that's no different from the one -- the ones at issue
5 here.

6 So are you just saying you shouldn't follow them?

7 **MR. MESSER:** They're saying there -- there's both a
8 lack of legal control, a lack of practical control, and that
9 this kind of ruling in this context is really unprecedented,
10 that these are usually one-time requests, not in cases of
11 vicarious liability for the actions of several companies. And
12 it's not manage -- reasonably manageable.

13 **THE COURT:** Why is it not reasonably manageable?

14 **MR. MESSER:** Because those parties, the vendors, are
15 not before the Court. I mean, if I can't get them, what then?
16 What happens to me then?

17 **THE COURT:** Well, that's the whole point. The -- The
18 point is -- What I'm saying is that you can get them because
19 you have a contract that you -- Well, first of all, I'm
20 assuming they're still your vendors and the contract is still
21 good.

22 **MR. MESSER:** All the -- Collecto -- Collecto's not.

23 **THE COURT:** I understand Collecto, but an earlier
24 judge ruled they were your agent, or you were -- yeah, they
25 were your agent and so that's Collecto, sort of.

1 **MR. MESSER:** Or at least they're -- that was pleaded
2 that they were.

3 **THE COURT:** Okay. That -- But they are still
4 currently, so you still have contracts with them that give you
5 the right to examine and audit and also review the supplier's
6 collection efforts.

7 I guess you're trying, well, that was intended -- and I
8 don't disagree with that -- to audit and review with respect
9 to -- I don't know. I mean, how much they're collecting?

10 **MR. MESSER:** Accounting. Where's the -- Are we -- Is
11 there proper amounts of money being paid?

12 **THE COURT:** But -- But I -- I -- I just find it hard
13 to believe that you would have no right to examine to make sure
14 that they were complying with the law in their collection
15 efforts.

16 I mean, clearly, Verizon does not want its vendors to be
17 breaking the law and would give itself the right -- and that's
18 how I read it -- to ensure they're complying with the law,
19 which is essentially what they're asking, documents that show
20 they're complying with the law.

21 And, frankly, if they're not using predictive dialers, I
22 would just produce them, and then you can get that part of the
23 class knocked out; right?

24 **MR. MESSER:** Right.

25 The -- I understand the Court's point of view and -- and

1 it's not a . . .

2 I think it is a -- a -- disappointing but -- but not
3 surprising, though.

4 **THE COURT:** That's all right. You can say -- You can
5 call it unreasonable. I will not be offended.

6 **MR. MESSER:** Your Honor, I'm -- I'm -- I'm not going
7 to go there. I mean --

8 **THE COURT:** All right.

9 **MR. MESSER:** -- I've read the cases.

10 **THE COURT:** All right. All right. Well, that's going
11 to be the Order of the Court.

12 I'll write something so that there's something written,
13 and then should you want to appeal it, of course, you have a
14 right to that with Judge Gonzalez Rogers.

15 I -- But I understand the objection. I understand. But
16 I -- I do think that -- I think they've shown legal control
17 within the Ninth Circuit's standard, which is a pretty high
18 standard, but I think it's met here.

19 That Arizona case you cited -- everyone keeps citing it to
20 me -- that is not a persuasive case at all and I'm not relying
21 on that case. But I'm --

22 **MR. PRESTON:** All right.

23 **THE COURT:** -- relying on the *Doe* case.

24 **MR. PRESTON:** It's helpful to have these discussions.

25 Why do you find it unpersuasive?

1 **THE COURT:** Well, be --

2 **MR. PRESTON:** Because of the context?

3 **THE COURT:** Because of the context, absolutely. It
4 was the plaintiff who filed suit and that was trying to avoid
5 producing any documents by creating a parrot just for the
6 purposes of the litigation.

7 **MR. PRESTON:** But what I -- You know, I --

8 **THE COURT:** But, anyway, let's not talk about it. I'm
9 not relying on it.

10 **MR. PRESTON:** That's fine.

11 **THE COURT:** I'm not relying on it. I'm relying simply
12 on the argument based on --

13 **MR. PRESTON:** The (inaudible) analysis of *Gerling* and
14 *Citric Acid* is helpful.

15 **THE COURT:** No. That's all right. Yeah. I've
16 analyzed it before. I just --

17 **MR. PRESTON:** Yeah.

18 **THE COURT:** I stick with *Citric Acid*, and the Ninth
19 Circuit.

20 So, in any event, that'll be the ruling of the Court.

21 Now, with respect to what the documents are.

22 Look, Mr. Preston doesn't need every single piece of
23 paper. This isn't supposed to be burdensome. What he needs is
24 a question answered. What were they using? What equipment
25 during the class period were they using?

1 And just to bring up. I did, you know -- You raised again
2 the objection as to relevance, but I went back and I looked at
3 the Third Amended Complaint and the class definition clearly
4 includes all the vendors. All the vendors. So I think it's
5 relevant. And that wasn't dismissed and there wasn't a
6 standing argument made at that time.

7 **MR. MESSER:** So we're talking about the vendors. I
8 want to make sure we're talking the pre -- pre-write-off, not
9 the claimed 26 --

10 **THE COURT:** No. We're talking -- I think you gave --
11 There was five names.

12 **MR. PRESTON:** Right.

13 **MR. MESSER:** Okay. Good. That's --

14 **MR. PRESTON:** Yeah.

15 **MR. MESSER:** That's also good for me to know.

16 **THE COURT:** No, no, no.

17 **MR. MESSER:** I don't -- I don't want -- That might be
18 unmanageable.

19 **THE COURT:** No, no, no. We're only talking about the
20 five that were addressed in the thing.

21 All right. So, then, what else is there that you need or
22 are waiting to file your -- Oh, so there's a motion to quash
23 that's been filed before Judge Gonzalez Rogers and noticed for
24 January.

25 I'm going to do an order that moves that to me because I

1 have all discovery in the case.

2 (Pause in proceedings.)

3 **THE COURT:** Oh, I did already?

4 **MR. MESSER:** Yeah.

5 **THE COURT:** Oh, I did?

6 **MR. MESSER:** She did.

7 **THE COURT:** Oh, she did.

8 **MR. MESSER:** Yester -- Yesterday afternoon, I think.

9 **THE COURT:** Oh, okay.

10 **MR. PRESTON:** You know, I'm not sure.

11 We served those subpoenas at a time where this dispute had
12 not been resolved, and so it was a duplicative. If we ran
13 aground in front of Your Honor, well, we've got a backup.

14 The subpoenas -- You know, if -- if Verizon is going to
15 produce those documents, I think the subpoenas are going to
16 be . . . not -- not terribly necessary.

17 **THE COURT:** Well, this -- Let me tell you what I was
18 going to do, anyway. And I'm -- Even though the -- the third
19 party's not here, but this was what I was going to do, anyway,
20 was, I was going to do an order, order you to meet and confer
21 because, from the -- the brief itself, it wasn't clear to me
22 that that had happened in a meaningful way, and that the -- No,
23 I don't want you to make any comment on it because they're not
24 here.

25 **MR. PRESTON:** I understand.

1 **THE COURT:** Okay. And so that will then give you the
2 opportunity to make that decision and have that discussion with
3 them.

4 **MR. PRESTON:** Sure. I mean, candidly, I don't think
5 we should do a thing about it. I shouldn't withdraw any of
6 those subpoenas until it's clear that Verizon is going to
7 produce all that stuff.

8 **THE COURT:** I don't know what you want to do with
9 that. I'm just telling you what I'm going to do with that
10 motion to quash.

11 All right. So is there anything else, then, that you're
12 waiting to receive that you need to file your class
13 certification motion?

14 **MR. PRESTON:** No. Once we get the vendors, then
15 the -- that data will be analyzed and -- and produced and --
16 and we'll do --

17 **THE COURT:** When you say, "Once we get the vendors,"
18 what are we talking about?

19 **MR. PRESTON:** When we get the call logs from Verizon's
20 other debt collectors.

21 **THE COURT:** All right. So that's -- Okay. So are
22 we -- Is that --

23 **MR. MESSER:** That's not the -- That's not within the
24 scope of the motion to compel.

25 **THE COURT:** Which was --

1 **MR. MESSER:** Narrow. It was -- The motion to compel
2 was focused on the dialing equipment and whether it was an
3 agent of --

4 **THE COURT:** Yeah. I understand.

5 But -- So let's just sort of predict the future motion to
6 compel.

7 So, Mr. Messer, I've now held or will hold -- issue an
8 order saying that you have . . . control -- legal control
9 within the meaning of *Citric Acid*.

10 So, I guess now you need to go speak to those people and
11 figure out what we're talking about -- right? -- with respect
12 to --

13 I mean, I suppose the first step is, Mr. Preston, for you
14 to find out what kind of equipment they're using, because if
15 they're not using a predictive dialer, or they're not
16 recording, you don't need the call logs.

17 **MR. PRESTON:** Well, we know who's recording. It's --
18 It's Vantage and BKI, because we -- that was the subject of
19 some discovery in the State Court.

20 (Pause in proceedings.)

21 **MR. PRESTON:** The documents that are subpoenaed and
22 the documents that we requested from Mr. -- Mr. Messer's
23 clients would reveal the model and make of these -- these
24 recorders.

25 But, I mean, if that's something that we could work out

1 in, you know, informal discovery, yeah, we're certainly --
2 nobody wants to force these people to -- to produce documents
3 from -- from machines that are definitely not predictive
4 dialers.

5 **THE COURT:** Okay. So maybe you can work it out with
6 some sort of sequence. So you provide them with the documents
7 that show what the equipment is and then, if you can get an
8 agreement on that -- And I know that sometimes there's even a
9 disagreement on that. But if you can get an agreement on that
10 and it's not, then there's no reason for them to go back and
11 pull the call logs.

12 **MR. PRESTON:** I -- I agree with that. But the only
13 thing I would ask is, you know, we've had -- I -- I don't
14 know -- I'm not saying anything, except that we've had some
15 difficulty with the subpoenas.

16 There is -- If you look at the Yee declaration -- that's
17 Document 63-1, Paragraph 3 -- I infer from that paragraph that
18 Verizon has had a hand in the directing or encouraging the debt
19 collectors not to comply with our subpoenas. And that's been a
20 concern we've -- we aired with the Court in the motion for
21 sanctions, and in this motion.

22 (Pause in proceedings.)

23 **MR. PRESTON:** I have some concern about the operation
24 where . . . if Verizon comes and says, "We can't produce these
25 documents, this vendor's being uncooperative," I -- I would

1 like there to be a record that is absolutely transparent and
2 absolutely crystal clear as to why that vendor is not
3 producing.

4 **THE COURT:** All right. Well, we'll get there when we
5 get there, and I'll set a further status so we can move along
6 because we're going to set a new class cert date and I want to
7 try to make sure we stay on with that date. So we'll get there
8 when we get there.

9 But I just wanted to -- So I think we've cabined all the
10 documents that you need from Collecto. You're getting those by
11 next Wednesday.

12 **MR. PRESTON:** Yes.

13 **THE COURT:** And then you're going to try to work out
14 something with respect to from the other vendors and something
15 sequential that makes sense so no one's producing anything that
16 doesn't need to be produced.

17 **MR. PRESTON:** Yeah. I mean, if there's cooperation,
18 we can probably cut it down (inaudible).

19 **THE COURT:** All right. So, what we can do with
20 respect to that is maybe have -- and we can do it by telephone
21 on December 4th -- a status. Because, by then, hopefully, you
22 guys will have talked -- we do have Thanksgiving in the
23 middle -- and just see where we are with that.

24 **THE CLERK:** Do you want to (inaudible) with that
25 motion to quash (inaudible)?

1 **THE COURT:** Yeah. I saw that she vacated it but I'll
2 do an order on the motion to quash.

3 That will be December 4th at . . .

4 What time should we -- What's my calendar? What time
5 works better if you're by phone? Morning or afternoon? Or
6 does it matter?

7 **MR. PRESTON:** I'm moving to Dallas.

8 **THE COURT:** You're moving to Dallas?

9 **MR. PRESTON:** On Saturday.

10 **THE COURT:** From Arizona?

11 **MR. PRESTON:** Yeah.

12 **THE COURT:** Oh, that's why.

13 **MR. PRESTON:** My wife --

14 **THE COURT:** Oh.

15 **MR. PRESTON:** My wife has cousin a less (inaudible)
16 job as a (inaudible) counselor of . . .

17 **THE COURT:** What do you think?

18 **THE CLERK:** How long is it going to take? Because you
19 booked yourself at 9:30 and 2:30 for (inaudible).

20 **THE COURT:** Oh, right, right, right.

21 So let's say --

22 **THE CLERK:** We can do a --

23 **THE COURT:** -- 2:00 -- 2:00 o'clock?

24 (Pause in proceedings.)

25 **THE COURT:** Does it work?

(Court and clerk confer.)

THE COURT: Oh, we can do it on a different -- Oh, just specially set it.

THE CLERK: Yeah.

THE COURT: Of course.

THE CLERK: Like the 2nd of December?

THE COURT: But that's too soon. I mean, that's too soon. I don't think we'll know. I think the following . . .

MR. PRESTON: The week after would be better.

THE COURT: The week after?

MR. PRESTON: Because of the move.

THE COURT: Well, no, and I want --

THE CLERK: The 11th.

THE COURT: -- everybody --

MR. PRESTON: Yeah.

(Pause in proceedings.)

MR. PRESTON: The 11th. We've got (inaudible) on the 12th.

THE CLERK: So at 9:00?

THE COURT: 9 o'clock?

MR. PRESTON: That works for me.

THE COURT: Okay. All right.

THE CLERK: Do you want to set it up for CourtCall?

MR. PRESTON: Yeah, because then there'd be -- We talked about that. Mr. Corroner (phonetic) wants to call the

1 Court, and if that's the most convenient way to do it, that's
2 fine.

3 THE CLERK: Okay.

4 THE COURT: All right. We'll do CourtCall on December
5 4th at 11:00.

6 THE CLERK: Okay.

7 THE COURT: All right. So the last thing is the
8 motion, I guess, for spoliation sanctions. And you asked for
9 some pretty dire sanctions, and so I don't think I can
10 really -- And you also did say, as you are wont to say, I need
11 more space.

12 (Laughing.)

13 So I also think, though -- I mean, that's a serious
14 matter. It's not something that -- It has to do with,
15 potentially, I guess, with an inference but nothing that has to
16 be decided ASAP because it's not about the Production of
17 Documents, about whether documents cannot be produced.

18 So you maybe should just file a noticed motion and I'll
19 just hear it, you know, so each side -- You've already
20 submitted some declarations. You don't have -- You can just
21 refer to them again.

22 But do -- If you're -- When you're -- A motion like that,
23 where you're seeking sanctions like that, I should think needs
24 to be done in a noticed motion.

25 MR. PRESTON: Your Honor's discovery order is

1 all-inclusive.

2 **THE COURT:** No, no, no. I'm not faulting you. I'm
3 just saying now having seen it and --

4 **MR. PRESTON:** Right.

5 **THE COURT:** -- read it, I think it should be done that
6 way.

7 **MR. PRESTON:** If it makes you feel a bit more
8 comfortable, I was concerned that I was really going to have to
9 make that record on four pages.

10 **THE COURT:** No.

11 **MR. PRESTON:** And, frankly, I did that little bit of a
12 job because the Court (inaudible).

13 **THE COURT:** No.

14 So that's fine. I'll just sort of deny it without
15 prejudice and that you just -- And maybe as you get -- Because
16 I think there is some issue as to whether you're going to get
17 the information that you claim is spoliated or needed, maybe,
18 when you get the stuff by Wednesday, some of that will be
19 clear, or not. I don't know. I'm just saying. And then you
20 can file the motion whenever you file it, and I'll just hear it
21 as a regular noticed motion.

22 **MR. PRESTON:** Thank you, Your Honor.

23 **THE COURT:** All right. Okay. Is there anything else,
24 then?

25 (Pause in proceedings.)

1 **MR. MESSER:** Not today, no.

2 **THE COURT:** Oh, great. All right. Good. I think
3 that was productive.

4 **MR. PRESTON:** It was productive.

5 **THE COURT:** All right. So we, then. Will have a
6 status on December 2nd -- no, no -- 11th at 9 a.m. Great.

7 **MR. MESSER:** We will be there.

8 **THE COURT:** Thank you everyone. Have a good holiday.

9 **MR. PRESTON:** You as well.

10 **THE COURT:** And good luck with your move.

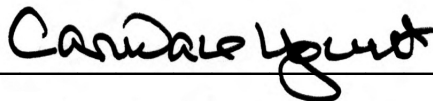
11 **MR. PRESTON:** Thank you.

12 (Court adjourned at 3:04 p.m.)
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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U. S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

A handwritten signature in black ink, reading "Candace Yount", is positioned above a horizontal line.

Candace Yount, Transcriber

Wednesday, November 26, 2014